

the economic momentum we have enjoyed. Apparently Chairman Greenspan wants to do to the housing market what he did to the stock market, and once again the average American on Main Street USA will suffer.

Sometimes, I feel like a voice crying out in the wilderness, but somebody has to tell Alan Greenspan and the FOMC that prosperity is not the enemy. I hope it will not take another recession for Chairman Greenspan to learn that lesson. The American people have already learned those lessons during his tenure in very painful ways.

#### IN MEMORY OF MARCIA LIEBERMAN

Mr. DODD. Mr. President, I rise to speak in memory of Marcia Lieberman, who passed away on June 26 at the age of 90.

Marcia was the mother of my dear friend and our colleague, JOE LIEBERMAN, with whom I have had the pleasure of serving in this body for 16 years. She was born in 1914, lived through the Depression, and ran her husband's business when he left to serve in World War II. She was active in senior centers and Connecticut Jewish groups. She campaigned with her son many times and served as his liaison to seniors. Her commitment to her community was constant and selfless. But biographical information alone cannot adequately describe this remarkable woman. Her legacy is an entire life lived well, a long string of simple moments of kindness and love.

It is possible to get a glimpse of that character in the anecdotes that have been told about her—the care packages to reporters, the quips to Larry King, and the matchmaking services offered to a traveling reporter. But it is more clearly illuminated in the warm memories of those of us who knew her, which were echoed in the beautiful eulogies that Senator LIEBERMAN and his children gave on Tuesday of this week at her funeral service.

As they so eloquently said, and as all her friends knew, Marcia strongly believed in the importance of family and was openly warm and caring with everyone she met. During Marcia's funeral service, the rabbi asked how many people in the audience believed they were her friend. Everyone raised their hand. He then asked who believed they were one of her best friends. Again, everyone raised their hand. She had an uncanny ability to make people feel close to her. This quality, among others, put people at ease and gave them confidence in themselves.

Marcia's loving nature often took the form of great strength and courage. She insisted that the members of her family take care of each other and live ethically. She was witty and saw the joy and humor in life until the very end. Even in the last few weeks of her life, she maintained her well-known strength and resilience, which helped her family through this difficult time.

She was a beautiful person, whose humor, kindness, and love were infectious for those who met her. She will be dearly missed.

I offer my deepest condolences to JOE, his sisters Rietta and Ellen, the whole Lieberman family, and to the countless others whose lives were enriched by Marcia Lieberman.

#### DEPARTMENT OF THE INTERIOR APPROPRIATIONS

Mr. THUNE. Mr. President, I applaud my colleagues for coming together in a bi-partisan manner to fix the budget shortfall at the VA. I proudly cosponsored the amendment and believe it was the best thing and the right thing to do. The amendment will provide \$1.5 billion in badly needed funds. Although the VA could limp along until fiscal year 2006, it would have to do so by raiding other accounts and cutting back on other projects. This is simply unacceptable.

I am proud the Senate chose unity over division to make sure that the shortfall at the VA does not affect veterans. I applaud the Senate leadership, Republican and Democratic, for both decisive and effective action.

The importance of adequately funding the VA cannot be understated. Along with our existing veterans, our men and women returning from Operation Iraqi Freedom and Operation Enduring Freedom need a VA that can support them and care for them.

#### CONSULTATION ON JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, last week a number of Senators urged the President, if a vacancy were to arise on the Supreme Court, to consult with Senators from both parties. I commend, in particular, Senator KENNEDY, a former Judiciary Committee chairman for his perspective on this and thank him for his diligence in helping make this essential point in his statements again this week.

Forty-four Senators sent the President a joint letter urging consultation and a consensus nomination. In addition, I understand that Senators Nelson and Salazar have also urged consultation.

Likewise the 14 Senators in the bipartisan group that averted the nuclear option included strong language in their agreement urging bipartisan consultation by the President. They wrote:

We believe that, under Article II, Section 2, of the United States Constitution, the word "Advice" speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

I agree. Bipartisan consultation is consistent with the traditions of the Senate and would return us to practices that have served the country well. They are right to urge greater consultation on judicial nominations.

Last week some on the other side of the aisle criticized me for offering to help the President should a Supreme Court vacancy arise. At the time, I said I stood ready to work with President Bush to help him select a nominee to the Supreme Court who can unite Americans. In spite of the unfair criticism, I reiterate today my willingness to help. I have urged consultation and cooperation for 4 our years and have continued to reach out over these last few weeks to the President. I hope that if a vacancy does arise the President will finally turn away from his past practices, consult with us and work with us.

I am troubled by the divisive battle lines being drawn by some right-wing groups that have launched attack ads in recent weeks. They attack Democratic Senators generally and individually in advance of a vacancy or a nomination. The other side has established a new low by going "negative" in advance and being critical in anticipation of a fight that I and others here in the Senate are working to avoid. The partisan activists supporting the White House have boasted for weeks about their war chest of upwards of \$20 million to be used to crush any opposition to this White House's selection. They have now chosen to fire a nasty preemptive strike in what they intend to make all-out partisan political warfare.

If the White House intends to follow that plan, it will be most unfortunate, unwise and counterproductive. I have urged, Democrats have urged a better way. Although the landscape ahead is sown with the potential for controversy and contention should a vacancy arise on the Supreme Court, confrontation is unnecessary. Consensus should be our mutual goal.

I hope the President's objective will not follow the path he has taken with so many divisive circuit court nominees and send the Senate a Supreme Court nominee so polarizing that confirmation is eked out in the narrowest of margins. This would come at a steep and gratuitous price that the entire Nation would have to pay in needless division. It would serve the country better to choose a qualified consensus candidate who can be broadly supported by the public and by the Senate.

The process will begin with the President. He is the only participant in the process who can nominate candidates to fill Supreme Court vacancies. If there is a vacancy, the decisions made in the White House will determine whether the nominee chosen will unite the Nation or will divide the Nation.

The power to avoid political warfare with regard to the Supreme Court is in the hands of the President. Senate Democrats are not spoiling for a fight however much partisans on the other side may be. The person who will decide whether there will be a divisive or unifying process and nomination is the President. If consensus is a goal, bipartisan consultation will help achieve it. That is what the American people want and what they deserve.

The Supreme Court should not be a wing of the Republican party, nor should it be an arm of the Democrat party. If the rightwing activists convince the President to choose a divisive nominee, they will not prevail without a difficult Senate battle. And if they do, what will they have wrought? The American people will be the losers: The legitimacy of the judiciary will have suffered a damaging blow from which it may not soon recover. Such a contest would itself confirm that the Supreme Court is just another setting for partisan contests and partisan outcomes. People will perceive the Federal courts as places in which "the fix is in."

I take the President at his word. He made a public commitment at a press conference several weeks ago to consult with Democratic as well as Republican Senators should a Supreme Court vacancy arise. If there were to be a vacancy, I look forward to consulting with the President.

Our Constitution establishes an independent Federal judiciary to be a bulwark of individual liberty against incursions or expansions of power by the political branches. That independence is what makes our judiciary the model for others around the world. That independence is at grave risk when a President seeks to pack the courts with activists from either side of the political spectrum. We need fair judges, not sure votes for a partisan agenda.

The American people will cheer if the President chooses someone who unifies the Nation. This is not the time and a vacancy on this Supreme Court is not the setting in which to accentuate the political and ideological division within our country. In our lifetimes, there has never been a greater need for a unifying pick for the Supreme Court. At a time when too many partisans seem fixated on devising strategies to force the Senate to confirm the most extreme candidate with the least number of votes possible, Democratic Senators are urging cooperation and consultation to bring the country together. There is no more important opportunity than this to lead the Nation in a direction of cooperation and unity.

The independence of the Federal judiciary is critical to our American concept of justice for all. We all want Justices who exhibit the kind of fidelity to the law that we all respect. We want them to have a strong commitment to our shared constitutional values of individual liberties and equal protection. We expect them to have had a demonstrated record of commitment to

equal rights. There are many conservatives who can meet these criteria and who are not rigid ideologues.

This is a difficult time for our country and we face many challenges. The President addressed the Nation about the difficult situation in Iraq just this week. We need to confront the truth about the situation in Iraq and develop a concrete strategy rather than the swaggering rhetoric we hear so much of lately. We need to do more about the rising gas prices and health care costs that burden so many Americans. We need to improve the economic prospects of Americans. We need to work together to defend against real threats, the proliferation of nuclear weapons, and disruption of critical food, water, energy and information services. It is my hope that we can work together on many issues important to the American people, including maintaining a fair and independent judiciary. I am confident that a smooth nomination and confirmation process can be developed on a bipartisan basis if we work together. The American people we represent and serve are entitled to no less.

Justice Thomas remarked this past Tuesday on the "winds of controversy swirling . . . about the imagined resignations" from the Supreme Court. We were all reminded, again, this week of the humanity of the Chief Justice of the United States Supreme Court. He concluded this year's term with dignity, humour and steadfastness. Despite the rampant speculation that continued this week, I know that the Chief Justice will retire when he decides that he should, not before. He has earned that right after serving on the Supreme Court for more than 30 years, the last 19 as the Chief Justice. I have great respect and affection for him and he is in our prayers.

Mr. CORNYN. Mr. President, in light of recent comments on the floor of this body concerning the possibility of a Supreme Court vacancy, I ask unanimous consent that an op-ed that I published in National Review Online on Monday, June 27, 2005, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the National Review Online, Jun. 27, 2005]

R-E-S-P-E-C-T

FOR THE LAW, FOR THE COURT, FOR THE CONSTITUTION, FOR THE NOMINEE...

(By Senator John Cornyn)

It wouldn't be summertime in Washington if speculation weren't running rampant about the possibility of a retirement announcement from the Supreme Court. But whatever the time frame for a Supreme Court vacancy, the process for selecting the next associate or chief justice should reflect the best of the American judiciary—not the worst of American politics. We deserve a Supreme Court nominee who reveres the law—and a confirmation process that is civil, respectful, and keeps politics out of the judiciary.

History affords us some important benchmarks for determining whether the Senate

has undertaken a confirmation process worthy of the Court and of the American people. There is a right way and a wrong way to debate the merits of a Supreme Court nominee. The Senate's past record, unfortunately, has been mixed.

Whoever the nominee is, the Senate should focus its attention on judicial qualifications—not personal political beliefs. Whoever the nominee is, the Senate should engage in respectful and honest inquiry, not partisan personal attacks. And whoever the nominee is, the Senate should apply the same fair process that has existed for over two centuries: confirmation or rejection by majority vote.

Whoever the nominee is, the Senate should focus its attention on judicial qualifications—not personal political beliefs. We should not be surprised if a person of the stature and legal ability to be considered for appointment to the Supreme Court has spent at least some time thinking, and perhaps speaking and writing, about the important and sensitive issues of the day. But a nominee should not be punished simply for exercising his talents. After all, judges swear an oath to obey and to apply the law—not their own personal, political views.

When President Clinton nominated Ruth Bader Ginsburg to the Court in 1993, senators knew that she was a brilliant jurist with a strong record of service in the law. Senators also knew she served as general counsel of the American Civil Liberties Union—a liberal organization that has championed the abolition of traditional marriage laws and attacked the Pledge of Allegiance. And they knew she had previously written that traditional marriage laws are unconstitutional; that the Constitution guarantees a right to prostitution; that the Boy Scouts, Girl Scouts, Mother's Day, and Father's Day are all discriminatory institutions; that courts should force taxpayers to pay for abortions, against their will; and that the age of consent for sexual activity should be lowered to age 12. The Senate nevertheless confirmed her by a 96-3 vote.

Similarly, Stephen Breyer (nominated in 1994 by President Clinton) and Antonin Scalia (nominated in 1986 by President Reagan) are brilliant jurists with strong records of service. Breyer had previously served as chief counsel to Senator Ted Kennedy on the Senate Judiciary Committee, and his nomination to the Court was opposed by many conservatives because of his alleged hostility to religious liberty and private religious education, while Scalia was known to hold strongly conservative views on a number of topics. The Senate nevertheless confirmed them by votes of 87-9 and 98-0, respectively.

The confirmation proceedings of Ginsburg, Breyer, and Scalia provide a helpful model for future behavior. Each of those nominees enjoyed exceptional legal credentials. Each possessed strongly held personal political views. And each commanded the support of a broad bipartisan majority of senators.

Whoever the nominee is, the Senate should engage in respectful and honest inquiry, not partisan personal attacks. Any debate over the next nominee to the Supreme Court must be conducted with respect and honesty. At a minimum, senators can disagree without being disagreeable. At a minimum, senators can debate the issues honestly, and refrain from distorting and misrepresenting records and rulings.

Unfortunately, respect for nominees has not always been the standard. Lewis Powell was accused of demonstrating "continued hostility to the law" and waging a "continual war on the Constitution," and Senate witnesses warned that his confirmation would mean that "justice for women will be

ignored." John Paul Stevens was charged with "blatant insensitivity to discrimination against women." Anthony Kennedy was scrutinized for his "history of pro bono work for the Catholic Church" and found to be "a deeply disturbing candidate for the United States Supreme Court." And David Souter was described as "almost Neanderthal," "biased," and "inflammatory." One senator said Souter's civil rights record was "particularly troubling" and "raised troubling questions about the depth of his commitment to the role of the Supreme Court and Congress in protecting individual rights and liberties under the Constitution." That same senator condemned Souter for making "reactionary arguments" and for being "willing to defend the indefensible," and predicted that if confirmed, Souter would "turn back the clock on the historic progress of recent decades." At Senate hearings, witnesses cried that "I tremble for this country if you confirm David Souter," warning that "women's lives are at stake" and even predicting that "women will die."

The best apology for these ruthless and reckless attacks is for them never to be repeated again. Unfortunately, the record is not promising. Even before President Bush took office in January 2001, the now-Senate Democrat Leader told Fox News Sunday that "we have a right to look at John Ashcroft's religion," to determine whether there is "anything with his religious beliefs that would cause us to vote against him." And over the last four years, this president's judicial nominees have been labeled "kooks," "Neanderthals," and "turkeys." Respected public servants and brilliant jurists have been called "scary" and "despicable."

Unfortunately, honest debate about a nominee's record has not always been the standard, either. Records and reputations have been distorted beyond recognition. Rulings that stated one thing have been characterized to say precisely the opposite. For example, during the debate over the nomination of my former Texas Supreme Court colleague, Justice Priscilla Owen, I chronicled numerous examples of her previous rulings that were blatantly misrepresented by partisan opponents of her nomination.

Moreover, in recent weeks, we've begun to see a particularly odd tactic take form. Some lower-court nominees have been attacked for belonging to a movement that, to my knowledge, does not even exist—the so-called "Constitution in Exile." What's more, opponents of this fictional movement seem to talk out of both sides of their mouth. Senate Democrats excoriated Justice Owen in part for her refusal to adhere to an allegedly central tenet of the Constitution in Exile—the nondelegation doctrine. And it was four Ninth Circuit judges appointed by Presidents Clinton and Carter who recently used another alleged doctrine of the Constitution in Exile—the Commerce Clause—to strike down federal laws prohibiting the use of marijuana and the possession of child pornography. If a "Constitution in Exile" movement really exists, its membership seems to include Senate Democrats and Democrat-appointed federal judges.

Reasonable lawyers can and do often disagree with one another in good faith. They do so respectfully and honestly—without distortions and false charges of being "out of the mainstream." We should likewise demand that the Senate restore respectful and honest standards of debate to the confirmation process.

And whoever the nominee is, the Senate should apply the same fair process that has existed for over two centuries—and that is confirmation or rejection by majority vote. The rules governing the judicial confirmation process should be the same regardless of

which party controls the White House or the Senate. Since our nation's founding over two centuries ago, the consistent Senate tradition and constitutional rule for confirming judicial nominees—including nominees to the Supreme Court—has been majority vote. (In the case of Abe Fortas, his nomination to be chief justice was withdrawn, after a procedural vote revealed that his nomination did not command the support of a majority of senators.)

Indeed, throughout history the Senate has consistently confirmed judges who enjoyed majority but not 60-vote support—including Clinton appointees Richard Paez, William Fletcher, and Susan Oki Mollway, and Carter appointees Abner Mikva and L. T. Senter. Yet for the past two years, a partisan minority of senators tried to impose a 60-vote standard on the confirmation of President Bush's judicial nominees. Thankfully, that effort was recently repudiated, when the Senate restored Senate tradition by confirming a number of this president's nominees by majority vote.

The effort to change our 200-year custom and tradition by imposing a new and unprecedented supermajority requirement for confirming judges is dangerous to the rule of law, because it politicizes our judiciary and gives too much power to special interest groups. As law professor Michael Gerhardt, a top Democrat advisor on the confirmation process, has written, "the Constitution also establishes a presumption of confirmation that works to the advantage of the president and his nominees." According to Professor Gerhardt, a supermajority rule for confirming judges "is problematic because it creates a presumption against confirmation, shifts the balance of power to the Senate, and enhances the power of the special interests."

Senate Democrats have recently asked to be consulted about any future Supreme Court nomination—even though the Constitution provides for the advice and consent of the Senate, not individual senators, and only with respect to the appointment, not the nomination, of any federal judge. If senators want such a special role in the Supreme Court nomination process, the president should first insist on their commitment to the three principles described above.

After years of unprecedented obstruction, and destructive politics, we must restore dignity, honesty, respect, and fairness to our Senate confirmation process. That is the only way to keep politics out of the judiciary.

#### TRIBUTE TO JOAN PIERMARINI

Mr. ROBERTS. Mr. President, I would like to take a moment to recognize Joan Piermarini, who is retiring after 20 years of service to the Senate Select Committee on Intelligence. Joan has served the committee under seven chairmen—a testament to her dedication and loyalty. I thank Joan for her many tireless efforts and the significant contributions she has made to the committee. We congratulate her on a job well done and wish her many years of happiness with her family, especially her grandson Luke.

#### HONORING OUR ARMED FORCES

A COLORADO HERO: ARMY SFC CHRISTOPHER W. PHELPS

Mr. SALAZAR. Mr. President, I rise today to take a moment to remember

one of Colorado's fallen heroes: Army SFC Christopher W. Phelps. Sergeant Phelps was killed last week in Baghdad, Iraq, while serving this Nation. He was 39.

Sergeant Phelps was a native of Louisville, KY. He graduated Male High School in 1984 where he was a standout athlete, helping to lead the Bulldogs to the State football playoffs. Sergeant Phelps went on to Kentucky State and a junior college in Mississippi before he enlisted in the Army.

In the Army, Sergeant Phelps served in the first Gulf war, where he drove a tank. This past spring, he was deployed to Iraq as a member of the Third Armored Cavalry Regiment based out of Fort Carson in Colorado. He enjoyed serving in the Army and was proud to be serving his country so honorably. He was a natural leader, a trait reflected by the nickname the members of his platoon gave him: "Dad."

While serving in Iraq, Sergeant Phelps was deeply moved by what he saw. He wrote home of the terrible poverty he witnessed and how much work was left to be done in Iraq. But Sergeant Phelps knew, as so all of our men and women in uniform, that our efforts were making Iraq a better place.

In his high school yearbook, an 18-year-old Christopher Phelps selected as a quote: "Do all you can while you can before it is too late." Sergeant Phelps embodied this sentiment in everything he did, from his days as a high school athlete to his exemplary service to our Nation and to the cause of freedom.

SFC Christopher Phelps served this country with honor and distinction and we are all humbled by his sacrifice. To his wife, Bobbi, and his daughters and son, my prayers are with you, as are those of an entire nation. Christopher's service to and sacrifice on behalf of this Nation will never be forgotten.

#### DETENTION CENTER AT GUANTANAMO BAY, CUBA

Mr. LEAHY. Mr. President, at a Defense Department news briefing in December 2001, a reporter asked Secretary Rumsfeld why we should use Guantanamo Bay to hold detainees. Secretary Rumsfeld's answer was that he "would characterize Guantanamo Bay, Cuba, as the least worst place we could have selected." This was hardly a ringing endorsement. Now, 4½ years later, the administration and its defenders have been trying to change the subject from the legal morass that Guantanamo has become, and to argue that Guantanamo is like an island resort, with great food, top-notch medical care, and a view of the ocean.

These arguments are distractions from the real issue, which is the needless way that the administration's unilateralism in its decisions about Guantanamo have compromised American principles and ideals and weakened our moral leadership in the world. If the administration has improved conditions at the prison, I am glad to